

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF)	
ILLINOIS)	
)	Docket No. 14-0291
Petition for an Order Pursuant to Section 8-509 of)	
the Public Utilities Act Authorizing Use of Eminent)	
Domain Power.)	

INITIAL BRIEF OF AMEREN TRANSMISSION COMPANY OF ILLINOIS

Dated: May 6, 2014

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I. INTRODUCTION

In Docket 12-0598, the Illinois Commerce Commission authorized Ameren Transmission Company of Illinois (ATXI), pursuant to Sections 8-406.1 and 8-503 of the Public Utilities Act¹, to construct, operate, and maintain a new 345 kilovolt (kV) electric transmission line across central Illinois. This project is known as the Illinois Rivers Project.² The Commission found the Project necessary to provide adequate, reliable, and efficient electric service to Ameren Illinois area customers. It also found that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers, and that it is the least cost means of satisfying those objectives. The Commission approved a defined route for the Project, including the route segments from the Mississippi River east through Quincy, Illinois, and then through Pike County towards Meredosia, Illinois. And—importantly—pursuant to Section 8-503 of the Act (220 ILCS 5/8-503), the Commission directed ATXI to construct the Project.³

The River to Quincy to Meredosia segments must be constructed and in service by 2016. In practical terms, to construct the Illinois Rivers Project—and deliver its benefits on time—ATXI must install towers or structures to carry the 345 kV transmission line along the approved route across some 370 miles of central Illinois. To do this, ATXI needs easements on the real property that the Project traverses.

For over seven months, since the Commission's initial order in Docket 12-0598, ATXI has negotiated with landowners to purchase the easement rights it needs to construct, and then

¹ 220 ILCS 5/8-406.1; 5/8-503

² *Ameren Trans. Co. of Ill.*, Docket 12-0598, Order at 133-35 (Aug. 20, 2013); *Ameren Trans. Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 82-84 (Feb. 20, 2014).

³ *Ameren Trans. Co. of Ill.*, Docket 12-0598, Order at 134; *Ameren Trans. Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 84.

operate and maintain, the subject segments of the Project. In many cases, those negotiations were successful, and ATXI acquired the easements it needs.

In some cases, however, good faith negotiations have not been successful. But, whether ATXI's negotiations with the owners of land along the Commission's approved routes for the Project are successful or not, ATXI must construct the Project, and do so on time. As a result, easement negotiations simply cannot go on forever. At some point, ATXI must acquire the requisite land rights by other means.

Section 8-509 of the Act provides the other means. It authorizes the Commission to permit public utilities like ATXI to use eminent domain authority to condemn, in circuit court, the property rights it needs to carry out Commission authorized construction. 220 ILCS 5/8-509. But, before granting eminent domain authority, the Commission requires a utility requesting eminent domain authority under Section 8-509 to show that it has made reasonable attempts to acquire land rights for the Project.

ATXI has been unable to acquire by negotiation easement rights in 27 properties along the route between the Mississippi River and Quincy, and between Quincy and Meredosia in Pike County (collectively the Unsigned Properties). In this proceeding, ATXI seeks eminent domain authority for those unsigned properties. The evidence amply demonstrates that ATXI has made reasonable attempts to acquire those properties by negotiation. ATXI contacted the owners of the Unsigned Properties on average 29 times—in person and by phone, mail, and email—to negotiate easement acquisition. ATXI offered the landowners generous compensation for the easement rights it needs, and it explained its offers to them. ATXI's offers are based on extensive market and appraisal data, and often approach 100% of fee value of the easement area for only easement rights. ATXI also addressed the landowners' concerns related to the

easements ATXI needs, and, where feasible, it accommodated those concerns.

Nevertheless, the owners of the Unsigned Properties will not sell ATXI the easement rights it needs to construct the Illinois Rivers Project. And negotiations to date suggest that future negotiations likely will not be fruitful. Accordingly, ATXI needs eminent domain authority to acquire the easements and, in turn, construct the Project consistent with the Commission's Docket 12-0598 directive and without delay, thereby bringing the Project's benefits to Ameren Illinois area energy consumers.

A. ATXI requests limited easement rights in only 27 Unsigned Properties.

The Unsigned Properties consist of 27 parcels of real property, owned by 24⁴ individual landowners, along two of the nine approved route segments of the Illinois Rivers Project: (1) from the Mississippi River to the new Quincy Substation (River to Quincy); and (2) the portion of the segment from the new Quincy substation to the expanded Meredosia substation (Quincy to Meredosia) within Pike County.⁵ (ATXI Ex. 1.0 (Rev.) (Trelz Dir.), pp. 2-3.)⁶

ATXI needs to acquire transmission line easements, which generally are 150 feet wide. (ATXI Exs. 1.0 (Rev.), p. 5; 2.0 (Murbarger Dir.), p. 6.) A 150-foot wide right-of-way is the minimum necessary to construct and safely maintain the Project's 345 kV transmission line. (ATXI Exs. 1.0 (Rev.), p. 6; 2.0, p. 6.) That width will provide adequate National Electric Safety Code clearances from the conductor to any buildings, trees, or vegetation on the edge of the right-of-way. (*See* NESC Rule 234C.1.) In some cases, ATXI also may need construction

⁴ ATXI has withdrawn its request for eminent domain for the Hunter Trust. (ATXI Ex. 3.0 (Trelz Reb.), pp. 5-6.)

⁵ The rest of the Project is not at issue in this proceeding. Instead, ATXI is seeking eminent domain authority on a segment-by-segment basis, or in some cases on a county-by-county basis within a particular segment. This is because the Illinois Rivers Project spans over 370 miles. The Company is evaluating the status of negotiations for individual segments and their relationship to the construction schedule for that segment. Based on this evaluation, the Company is determining which segments or counties within the segments should be filed in individual cases. (ATXI Ex. 1.0 (Rev.), p. 3.)

⁶ Maps depicting the location and layout of each of the Unsigned Properties are attached as Appendix A. Legal descriptions of each easement across the Unsigned Properties are attached as Appendix B.

easements or access rights (for ingress and egress and vegetation management), depending on the layout of the landowner's property and the location of the transmission line. (ATXI Exs. 1.0 (Rev.), p. 6; 2.0, p. 7.) Construction easements are necessary if, during installation of the wires, the construction contractor needs to set up equipment outside the transmission line right-of-way. Construction easements, where necessary, could be up to 150 feet in width, in addition to the transmission line easement area. (ATXI Exs. 1.0 (Rev.), p. 6; 2.0, p. 7.) Access rights are necessary if, in order to operate and maintain the line after it is constructed, ATXI must cross a landowner's property to reach the easement area or to maintain vegetation adjacent to it.

B. ATXI's request is uncontested for the majority of the Unsigned Properties.

No party presented evidence contesting ATXI's need for eminent domain authority related to 21 of the 27 Unsigned Properties:

	Tract Number	Tax ID Number(s)	Primary Owner
1	A_ILRP_RQ_AD_001-ROW	20-0-1826-000-00, 20-0-1889-000-00, 20-0-1834-000-00, 20-0-1830-000-00	Breckenkamp Farms, LLC Care of: Don Breckenkamp
2	A_ILRP_RQ_AD_016-ROW	20-0-1886-002-00	Linda Hendricks
3	A_ILRP_RQ_AD_019-ROW	20-0-1886-001-00	TJ Heritage LLC
4	A_ILRP_RQ_AD_020-ROW	20-0-1920-000-00	Trust Agreement Dated December 13, 1985
5	A_ILRP_RQ_AD_040-ROW	20-0-1356-000-00, 20-0-1919-000-00, 20-0-1913-000-00	H. Roy Dodd Trust
6	A_ILRP_RQ_AD_084-ROW	20-01353-004-00	Ronald L. Reichert
7	ILRP_RQ_AD_072-ROW	20-0-1143-009-00	Matt Holtmeyer Construction Inc.
8	ILRP_QM_PI_003-ROW	34-006-06	Denise A. LaCroix
9	ILRP_QM_PI_004-ROW	34-006-09	Gordon G. Kurfman
10	ILRP_QM_PI_005-ROW	34-006-10	Kevin R. Henthorn Revocable Family Trust, dated November 3, 2003
11	ILRP_QM_PI_011-ROW	34-014-08	Carl R. Kurfman
12	ILRP_QM_PI_024-ROW	34-009-05, 34-010-01, 34-010-02, 34-010-04, 34-012-04, 34-012-08	Webel Farms II, LLC
13	ILRP_QM_PI_034-ROW	34-011-01, 34-011-02, 34-011-05	Orville E. Whitmore
14	ILRP_QM_PI_041-ROW ILRP_QM_PI_045-ROW	33-006-10, 33-006-11, 33-019-07 33-007-01, 33-019-03,	Hooterville Hunt Club Inc.

15	ILRP_QM_PI_046-ROW		
16			
17	ILRP_QM_PI_047-ROW	33-007-10, 33-018-05	Reginald L. Liehr
18	ILRP_QM_PI_077-ROW	33-011-05, 33-011-09, 33-011-10, 33-014-05	Nature House, Inc. Care of: Dick Milgrim, Mercantile Bank
19	ILRP_QM_PI_094-ROW	32-018-09	Michael J. Leahr
20	ILRP_QM_PI_112-ROW	32-016-07, 32-016-08, 32-013-06,	Lawrence Wiese Farms, Inc.
21	ILRP_QM_PI_114-ROW	32-014-01, 32-016-02	

In fact, only 2 landowners, representing 5 of the 27 Unsigned Properties, submitted testimony in this proceeding opposing ATXI's petition: Roger Liehr and Paul M. Keller, on behalf of the Paul and Jeanie Keller Trust, the Ann Henrietta Keller Trust, and Laura Ann Daggett (collectively the Keller Intervenors). Even considering the positions of counsel taken at hearing, ATXI's need for eminent domain authority is contested only for, at most, seven of the Unsigned Properties. And, for the contested properties, the landowners' predominant concern is money. Simply stated they want more compensation. But the value of the limited easement rights that ATXI needs in the Unsigned Properties is outside the scope of this proceeding.

C. Staff agrees that ATXI has satisfied the requirements for eminent domain authority for the Unsigned Properties.

Staff agrees that "ATXI has demonstrated that it has made reasonable efforts to obtain the property rights it needs through use of logically and consistently derived initial compensation offers followed by discussions and negotiations with individual landowners," in satisfaction of the requirements for eminent domain authority, for all but one of the Unsigned Properties that is no longer in dispute.⁷ (ICC Staff Ex. 1.0 (Rockrohr Dir.), p. 4.) In support of its position, Staff

⁷ Staff raised concern regarding one property, tract A_ILRP_RQ_AD_014, and noted that the owner had unresolved concerns at the time ATXI filed its Petition in this case about a pre-existing Ameren Illinois Company easement on his property. (ICC Staff Ex. 1.0, pp. 5-6.) Staff questioned whether ATXI had adequately resolved that landowner's concern. (*Id.* at 6.) In response to Staff's concern, ATXI withdrew its request for eminent domain authority related

notes that ATXI provided adequate information regarding its methods for obtaining the property rights it seeks over the Unsigned Properties through negotiation. (*Id.* at 3.) Specifically, Staff witness Mr. Rockrohr notes that ATXI included a summary of its attempts to contact the landowners with respect to whom ATXI is seeking eminent domain authority, and provided copies of its confidential workpapers for each property that include the date and time of each of its attempts to contact the landowners, as well as the basis for its property evaluations and offers of compensation. (*Id.* at 4-5.) Accordingly, Staff and ATXI agree that ATXI has satisfied the “reasonable attempts” requirements of Section 8-509.⁸

II. STATUTORY AUTHORITY AND STANDARD OF REVIEW

Section 8-509 of the Public Utilities Act permits a public utility to take, by eminent domain, private property necessary to the construction of utility facilities ordered or authorized by the Commission. 220 ILCS 5/8-509 (“When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.”). A utility seeking to take private property by eminent domain pursuant to Section 8-509 must first obtain Commission approval to exercise that authority in the circuit court. *See Ill. Bell Tel. Co. v. Lewis*, 117 Ill. App. 3d 72, 75 (4th Dist. 1983).

Section 8-509 requires both that a utility seeking eminent domain authority have permission under Sections 8-406.1 or 8-503 of the Act to construct the utility facilities at issue

to this tract, pending further negotiation with the landowner regarding the existing easement. (ATXI Ex. 3.0, pp. 5-6.)

⁸ Staff also noted that multiple land agents acting on behalf of ATXI contacted individual landowners during negotiations, but did not suggest that such contacts were insufficient under the Act. (ICC Staff Ex. 1.0, p. 6.) ATXI, however, has committed to reviewing the number of land agents that contact each landowner, and the process by which agents are assigned to landowners, and will make efforts to limit the number of agents that contact each landowner in the future. (ATXI Ex. 3.0, p. 6.)

and that eminent domain be “necessary” for construction. *See Ameren Ill. Co.*, Docket 13-0516, Order at 3 (Oct. 23, 2013); *Ill. Power Co.*, Docket 10-0173, Order at 3 (Nov. 23, 2010). In determining whether eminent domain is necessary, the Commission requires the utility to show that it has made a reasonable attempt to acquire the property rights it needs. *See, e.g., Ameren Ill. Co.*, Docket 13-0516, Order at 3 (citing *Ill. Power Co.*, Docket 06-0706, Order, p. 88 (Mar. 11, 2009)); *Ameren Ill. Co.*, Docket 13-0456, Order at 3 (Sept. 10, 2013); *Ameren Ill. Co.*, Docket 11-0469, Order at 3 (Dec. 13, 2011); *Ill. Power Co.*, Docket 10-0173, Order at 3 (Nov. 23, 2010); *Ill. Power Co.*, Dockets 08-0291/0449 (Cons.), Order at 15 (June 9, 2009) (citing *Cent. Ill. Pub. Serv. Co.*, Docket 07-0532, Order at 14 (May 6, 2009)). The Commission evaluates whether a utility has made reasonable efforts to negotiate for the property rights it needs by considering five factors:

- (1) the number and extent of contacts with the landowners, (2) whether the utility has explained its offer of compensation, (3) whether the offers of compensation are comparable to offers made to similarly situated landowners, (4) whether the utility has made an effort to address landowner concerns, and (5) whether further negotiations will likely prove fruitful.

Ameren Ill. Co., Docket 13-0456, Order at 3. *See also Ameren Ill. Co.*, Docket 13-0516, Order at 3; *Ameren Ill. Co.*, Docket 11-0469, Order at 3; *Ill. Power Co.*, Docket 10-0173, Order at 14-16; *Cent. Ill. Pub. Serv. Co.*, Docket 95-0484, Order at 13 (July 17, 1996); *Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, Order at 24 (Oct. 3, 1990); *Mount Carmel Pub. Util. Co.*, Docket 91-0113, Order at 6 (May 16, 1991); *Cent. Ill. Pub. Serv. Co.*, Docket 90-0206, Order (Jan. 9, 1991); *Cent. Ill. Pub. Serv. Co.*, Docket No. 90-0427, Order (Apr. 3, 1991).

Notably, however, while the Commission considers the utilities’ offers of compensation, it is well established that whether an offer is just compensation for an easement lies within the jurisdiction of the circuit court, not the Commission. *See, e.g., Rich v. City of Chicago*, 59 Ill.

286, 294 (1871) (finding “the act of ascertaining the value is . . . judicial in its nature” and the judicial department is the proper entity to determine the question of just compensation); *Forest Preserve Dist. v. West Suburban Bank*, 161 Ill. 2d 448, 457 (1994) (“The very purpose of an eminent domain proceeding [in state court] is to determine the amount of just compensation constitutionally owed to the landowner.”) (citing *Ill. Cities Water Co. v. City of Mt. Vernon*, 11 Ill. 2d 547, 551 (1957)). Accordingly, the Commission will not consider valuation of the property rights sought in a Section 8-509 proceeding. *See, e.g., Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, 1990 Ill. PUC LEXIS 504, Order at *24-25 (Oct. 3, 1990) (“The Commission notes that it does not have the authority to establish the price to be paid to landowners for right-of-way. That issue is to be decided by the courts.”). As the Commission explained in Docket 10-0173, “the Commission does not intend to make any pronouncements regarding the actual value of any parcel sought in an eminent domain proceeding.” *Ill. Power Co.*, Docket 10-0173, Order at 16. So while the Commission will evaluate whether the utility made comparable offers to landowners with similar circumstances and explained the basis for its compensation offered, it does not make any determination about the *amount* of those offers. *Id.*; *see also Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, 1990 Ill. PUC LEXIS 504, Order at *24-25.

III. CONTACT WITH LANDOWNERS

ATXI first began contacting the owners of the Unsigned Properties in September 2013, after the Commission issued its Order in Docket 12-0598 authorizing construction of the River to Quincy and Quincy to Meredosia segments of the Project, among others. (ATXI Ex. 1.0 (Rev.), p. 6.) Specifically, on September 6, 2013, ATXI sent by certified mail, return receipt requested, to the persons identified as the current owners of the Unsigned Properties in the records of the pertinent county Tax Collectors, a letter and “Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights of Way by Illinois Utilities”

consistent with 83 Illinois Administrative Code Part 300. (*Id.*)

Two weeks after those mailings, beginning on September 21, 2013, ATXI began contacting the owners of the Unsigned Properties directly. (*Id.* at 6-7.) ATXI, through its professional land agents, contacted, in person if possible, the landowners to discuss the purpose of the Project and the reason for the contact. (*Id.* at 7.) At this time, ATXI also provided landowners with a written statement of the Project's purpose, a small-scale map, and a property-specific option exhibit (sketch), as well as information regarding the type and location of the proposed facilities. (*Id.*; *see e.g.* ATXI Ex. 1.4(A), p. 3 (signed agent checklist verifying agent discussed and provided landowner certain information, including the approximate location of poles); *see also* ATXI Ex. 1.2 (sample landowner packet).)

During this second contact, ATXI also offered compensation for the easements it needs to acquire to construct the Project. (ATXI Ex. 1.0 (Rev.), p. 7.) The offers were based on an independent third-party appraiser's determination of the market value of each property. (*Id.*) ATXI explained this to each landowner, and provided each with a property calculation worksheet, based upon the appraisers' opinion and including compensation for other items, such as crop damage, where applicable. (*Id.*) ATXI also provided to each landowner, when completed, the appraisal of his or her property, which included the valuation of the easement (as determined by comparing the value of the entire property before and after the easement) and determination of any diminution of value to the remaining property, if pertinent. (*Id.*) Additionally, ATXI explained to the landowners the dimensions of the easement it sought and the proposed easement document. (*Id.*) Finally, ATXI ensured its representatives were available for discussion and negotiations as required and/or requested by each landowner. (*Id.* at 7-8; *see also* ATXI Ex. 1.3 (sample "check list" of items to be addressed by ATXI's professional land

agents during their first meeting with landowners).)

Thereafter, ATXI contacted or attempted to contact—by letter, email, phone, or in person—each owner of the Unsigned Properties at least seven times. In some cases, the landowner asked ATXI to cease all contact, and ATXI complied. (*Id.*) On average, however, each landowner of the Unsigned Properties was contacted 29 times. (ATXI Ex. 1.1 (Rev.)) The record confirms the extent of the negotiations with the Unsigned Properties. (ATXI Exs. 1.0 (Rev.), pp. 8-9; 1.1 (contact log providing number and type of contact for each Unsigned Property); 1.4 (describing ATXI's discussions and negotiations with each landowner); 1.5 (Rev.) (detailing offers and counteroffers made).)

These efforts to contact landowners are similar to those the Commission consistently finds reasonable. *See, e.g., Ameren Ill. Co.*, Docket 13-0456, Order (Sep. 10, 2013) (granting utility eminent domain authority where it contacted landowners at least 15 times); *Ameren Ill. Co.*, Docket 13-0516, Order (Oct. 23, 2013) (granting utility eminent domain authority where it contacted landowners at least 15 times); *Ameren Ill. Co.*, Docket 11-0469, Order (Dec. 13, 2011) (granting utility eminent domain authority where it contacted landowners at least 11 times); *Illinois Power Co.*, Dockets 08-0291/0449 (cons.), Order (June 9, 2009) (granting utility eminent domain authority where it contacted landowners at least 14 times).

IV. EXPLANATION OF COMPENSATION OFFER

The record reflects that ATXI has explained, in detail, the basis for its offers of compensation to each owner of the Unsigned Properties. ATXI provided each landowner and/or their attorney with a detailed calculation sheet stating the total market value of their land, the easement acreage, the percentage of market value at which ATXI believed the easement should be valued, and ATXI's compensation offer itself. (ATXI Exs. 1.0 (Rev.), p. 9; 1.2 (sample calculation sheet).) ATXI also explained to the landowners that its initial offer was based on an

independent, third-party appraiser's determination of the market value of their property. (*Id.*)

And ATXI explained how it plans to address any construction damages to property. Specifically, ATXI told landowners that it is responsible for the restoration of, or payment of damages for, their property, and that it would notify each landowner before construction commenced. (*Id.*) For agricultural property, ATXI offered the landowners, at their option, prepaid damages for anticipated crop loss, on a graduated basis, spread over a five-year period. ATXI also offered prepayment for anticipated general property damages, such as compaction and deep ripping, and restoration, such as fertilizer, rutting and reseeding. (*Id.*) If a landowner did not accept prepayment, ATXI explained that it would individually assess their property for damage at the end of the construction phase. (*Id.* at 9, 10-11.) Finally, ATXI explained, it would assign an ATXI representative to be available to each landowner for the purpose of reporting any construction damage. (*Id.* at 9-10.)

V. REASONABLENESS OF COMPENSATION OFFERS

ATXI intends to fairly compensate landowners for the impact of the Project on their property so that, after the Project is constructed, there is no impact to the property that results in a diminution in value beyond that reflected in the compensation that ATXI paid. (ATXI Ex. 1.0 (Rev.), p. 10.) Therefore, ATXI offered compensation intended to make landowners whole by fully compensating for any impact on the market value of their property caused by imposition of the easement for and the presence of the transmission line. (*Id.*)

A. ATXI's initial compensation offers exceeded the appraised market value impact of the easement it needs to construct the Project.

ATXI is only seeking easements across the Unsigned Properties. ATXI is not seeking to acquire the land in fee. The landowners will retain all remaining property rights apart from ATXI's easement rights. (*Id.* at 12.) Nevertheless, ATXI initially offered all of the Unsigned

Properties' landowners 90% of the fee value of the easement area. (*Id.* at 11.) When combined with a signing bonus, ATXI's initial offers amounted to the full fee value of the easement acreage. And these offers were in addition to any crop, or construction related damages, as outlined above.

B. ATXI's compensation offers are based on a consistent methodology for all landowners.

ATXI developed its offers of compensation based on a methodology designed to be consistent for all landowners and to produce comparable offers for similarly situated landowners. ATXI retained the appraisal firm Allen, Williford and Seale, Inc., a national appraisal firm that specializes in linear infrastructure projects (Tr. 100), to prepare an appraisal report for each property over which ATXI needs easement rights. (ATXI Ex. 1.0 (Rev.), p. 11.) ATXI applied the same methodology to each property. The appraisals determined the total market value of each property, if purchased in fee, based on the current highest and best use of the property. This determination took into account "all factors willing, knowledgeable buyers and sellers would consider in negotiating the purchase price of the property[,] except the influence of the proposed project." (Witte Cross Ex. 1.) These factors include, but are not limited to the following: (1) "the size, shape, zoning classification and other physical characteristics of the subject property in relation to the comparable market data" (other factors regarding the market data were also considered, including "location, market conditions, conditions of sale, and other characteristics"); (2) "the location of the proposed easement along the property;" (3) and "the impact of the easement on the subsurface, surface, and air right estates for the property."⁹ (*Id.*) The appraisers then determined the effect on the market value of the property caused by

⁹ This determination did not consider whether there are any existing easements on the property, and the appraisal did not apply a discount for the existence of any such easements. (Witte Cross Ex. 1.) This only benefits landowners whose property's market value may have been impacted by existing encumbrances.

imposition of the transmission line easement, including whether any property outside of the easement strip would suffer diminution in value. (*Id.*) This determination considered “all factors willing knowledgeable buyers and sellers would consider in negotiating the purchase price of the property[,] including the use to which the part taken is to be put and the effects of the condemnation[,] but excluded the effects of all non-compensable elements.” (*Id.*) From this the value of the easement was derived. It is the difference between the market value of the property with and without the easement. Typically, this value is 90% of the fee value of the easement acreage. (*Id.*)

ATXI’s initial offers also included compensation for other factors: crop damages equal to three years of crop loss for the entire easement area (to be paid on a graduated basis over five years); any additional non-crop land damages (*id.*; ATXI Ex. 1.2 (sample calculation worksheet)); and non-typical factors specific to each individual parcel that affected its value (ATXI Ex. 1.0 (Rev.), p. 12). ATXI’s compensation offers also factored drainage tile damage. (*Id.* at 11.) In fact, ATXI and the Illinois Department of Agriculture have agreed on a method for identifying and repairing damaged tile, and, on November 8, 2012, entered into an Agricultural Impact Mitigation Agreement (AIMA) reflecting their agreement related to drainage tile as well as a broad range of agricultural concerns. (*Id.*)

ATXI also offered each landowner a 10% signing bonus if they signed the easement agreement by December 31, 2013. Then, in order to encourage settlement with unsigned landowners, ATXI extended that bonus period to January 31, 2014. (ATXI Ex. 1.0 (Rev.), pp. 11-12.)

ATXI used the same methodology to determine the appropriate compensation for each easement it needs, and it considered future damages as well as characteristics unique to each of

the Unsigned Properties. By using this same methodology for all landowners, ATXI's initial offers are reasonable and comparable.

C. ATXI's methodology is similar to those approved by the Commission in the past.

The Commission has granted eminent domain authority to other utilities using the same or a similar methodology to determine offers to acquire land rights for electric transmission lines. *See, e.g., Ameren Ill. Co.*, Docket 13-0456, Order (granting eminent domain authority after utility made initial offers of 75% of appraised fee value); *Ameren Ill. Co.*, Docket 13-0516, Order (same); *Ameren Ill. Co.*, Docket 11-0469, Order (granting eminent domain authority after utility made initial offers of 50-75% of appraised fee value); *Illinois Power Co.*, Docket 10-0173, Order (same). ATXI's offer of a substantial portion of the full market value of the land, despite that the landowners retained all other rights incident to the land, is also consistent with prior approved methodologies. (*Id.*) *See generally, Ill. Power Co.*, Dockets 08-0291/0449 (Cons.), Order (granting utility eminent domain authority where its initial compensation offers were at least 75% of fee value).

D. ATXI revised compensation offers to reasonably accommodate landowner concerns.

Despite ATXI's full fee offers of compensation, ATXI has not reached agreement with the owners of the Unsigned Properties. (ATXI Ex. 1.0 (Rev.), p. 13.) In most cases, the Unsigned Properties' landowners considered ATXI's offer too low, citing either damage to the remainder of the property or a difference of opinion regarding the highest and best use of the property as the basis for their refusal. (*Id.*; *see also* ATXI Ex. 1.4.) ATXI has addressed these concerns where it is able to do so. In some instances, it increased its initial compensation offer to reflect additional valuation information that the landowners provided ATXI or additional sales of comparable property in the area. (ATXI Ex. 1.0 (Rev.), p. 13.) ATXI encouraged all

landowners to provide their own current appraisal for their property. (*Id.*)

Like ATXI's initial compensation offers, and for the same reason, the revised offers were reasonable. The 90% of fee value of the easement property that ATXI initially offered is fair compensation for the easement rights it sought. Accordingly, any higher offers are similarly fair. (*Id.*)

E. Intervenor's objections relate to the amount of compensation; but differences over the amount of compensation do not signal bad faith negotiations.

Certain intervening landowners raised concerns in testimony or at hearing about the compensation offered by ATXI. Because these concerns are focused primarily on disagreements about the amount of compensation offered by ATXI, rather than the negotiation process itself, these concerns do not support a finding that ATXI has not made reasonable attempts to negotiate.

As discussed above, courts, not the Commission, consider whether the dollar value offered to the landowner is just compensation for the property. *Forest Preserve Dist. v. West Suburban Bank*, 161 Ill. 2d 448, 457 (1994) ("The very purpose of an eminent domain proceeding [in state court] is to determine the amount of just compensation constitutionally owed to the landowner."). Thus, although the Commission considers whether a utility seeking eminent domain authority has made reasonable efforts to negotiate with landowners, this reasonableness inquiry does not extend to the dollar value of the offers themselves.

But that is precisely the concern raised by the intervenors. For example, Mr. Keller implies that the appraisals of the Keller Intervenors' properties did not properly determine the highest and best use of the land. (Keller Aff. at ¶¶ 2-4.) Webel Farms appears to want ATXI to increase its offer to cover the cost of moving a swimming pool. (Webel Cross Ex. 1.) Certain intervenors argue that ATXI has failed to include amounts for damage to the remainder of the property. (Keller Cross Ex. 3.) But, the highest and best use of the land belonging to the Keller

Intervenors, whether the compensation paid to the Webels' includes swimming pool relocation costs, and other valuation issues are properly determined by a circuit court during the course of eminent domain proceedings, not by the Commission. Damage to the remainder is considered by ATXI's appraisers, and included in the offers in the rare instances where it is appropriate.

(ATXI Ex. 1.0 (Rev.), p. 12.) To the extent the appraisers' determination to include, or not, an amount for damages to the remainder is questioned, that is also a decision for the circuit court.

In circuit courts, generally, damages to the remainder are only recognized when the taking of the parcel effectively damages or destroys the principal use for which the remainder was designed, *Lake Cnty. Pub. Building Comm'n v. La Salle Nat'l Bank*, 176 Ill. App. 3d 237, 242 (2d Dist. 1988), which would not be the case where the remainder of a property can continue to be farmed.

Instead, the Commission need only determine whether ATXI made reasonable efforts to negotiate with landowners. ATXI developed its offers of compensation through a reasonable methodology, based on independent appraisal reports. (ATXI Ex. 3.0, pp. 3-4.) *See, e.g. Forest Preserve Dist. v. First Nat'l Bank*, 961 N.E.2d 775 (2011) (noting that offers based on the advice of experienced appraisal consultants are normally sufficient to show good faith in negotiations). And ATXI has offered reasonable amounts of compensation—at least 90% of the fee value of the land subject to the easement, even though the landowners will retain all other existing property rights other than those that conflict with the rights sought by ATXI. (*Id.*) The Commission has repeatedly found the methodology similar to that used by ATXI for calculating compensation offers to be reasonable. *See* (ATXI Ex. 3.0, p. 4); *see also generally, Ameren Ill. Co.*, Docket 13-0456, Order (Sep. 10, 2013); *Ameren Ill. Co.*, Docket 13-0516, Order (Oct. 23, 2013); *Ameren Ill. Co.*, Docket 11-0469, Order (Dec. 13, 2011); *Ill. Power Co., et al.*, Docket 10-0173, Order (Nov. 23, 2010). The fact that ATXI's offer of compensation differs from the

intervenors' counteroffers or opinions regarding the value of their land is not evidence of unreasonable or bad faith negotiations.

VI. RESPONSIVENESS TO LANDOWNER CONCERNS

ATXI also addressed landowner concerns unrelated to compensation. Some of those concerns related to specific changes landowners proposed to the language of the easement conveyance document. (ATXI Ex. 1.0 (Rev.), pp. 11, 14.) ATXI considered each proposed change individually. Where it could incorporate the changes without comprising the easement rights it needs for the Project, ATXI agreed to revise the easement document. (*Id.* at 14.) Some proposed changes to the document, however, would impose restrictions or otherwise unreasonably limit the usefulness or intent of the easement. (*Id.*; *see also* ATXI Ex. 1.4 (describing discussions)). ATXI could not accommodate those changes.

As ATXI Exhibit 1.4 shows, ATXI routinely made changes to easement language to address landowner concerns. In fact, such requests were accommodated for three owners of Unsigned Properties. For example, ATXI entered a confidential settlement agreement with the Christopher B. Hunter Trust, which resolved the Trust's concerns regarding ingress and egress on the Trust property. (ATXI Ex. 1.4(K), p. 1.) Similarly, ATXI entered a confidential settlement agreement and an amendment to the easement agreement with Mr. Derek Kurfman, which addressed various issues regarding the parties' usage and liabilities within the easement area. (ATXI Ex. 1.4(O), p. 1.)

Other landowners expressed concern regarding the routing of the line and requested that ATXI alter the proposed location of the transmission line structures on their property. (ATXI Ex. 1.0 (Rev.), pp. 14-15.) ATXI also addressed those concerns. ATXI was willing to accommodate those requests provided they do not compromise ATXI's design standards for reliability and/or the integrity of the line, and otherwise are consistent with applicable regulatory

approvals and requirements. (*Id.*; *see also* ATXI Ex. 1.4 (describing discussions).) As ATXI Exhibit 1.4 shows, ATXI routinely made changes to pole locations to address landowner concerns. In fact, such requests were accommodated for four owners of Unsigned Properties. For example, Mr. Kevin Dodd, acting on behalf of the H. Roy Dodd Trust, requested that ATXI relocate structures closer to the middle of his parcels instead of near the road, so as to avoid several planned home sites. (ATXI Ex. 1.4(E), p. 1.) Mr. Dodd later asked ATXI to relocate an additional structure to avoid an existing home on his property. (*Id.*) ATXI was able to accommodate both of these requests. (*Id.*) Similarly, Mr. Arthur Witte asked ATXI to relocate a structure so as not to disrupt the entrance to a convenience store he allegedly plans to construct on his property. (ATXI Ex. 1.4(F), p. 1.) ATXI accommodated this request. (*Id.*) ATXI also moved the pole locations 100 feet south of the Webel Farms homestead. (ATXI Ex. 1.4(R) (Rev.), p. 1.)

A. Intervenor’s claims about ATXI’s responsiveness do not support a conclusion that ATXI has not made reasonable attempts to acquire properties.

Certain intervenors, in testimony or through counsel at hearing, have suggested ATXI has not been responsive to their latest position in negotiations. Ignoring the months of contacts preceding them—which have yet to produce a resolution—these intervenors focus on single recent events. But their narrow focus misses the forest for the trees in each case.

First, exhibits submitted by Webel Farms at hearing imply that ATXI made insufficient efforts to negotiate because it did not include compensation for the relocation of a swimming pool on the residential portion of the Webel Farms property. (Webel Cross Exs. 1, 3.) Throughout negotiations between Webel Farms and ATXI, however, the Webels’ primary concern was the transmission line’s impact on the residence. ATXI responded to the Webels’ concern by agreeing to relocate the transmission line further away from the residence. (Webel

Cross Ex. 3.) In fact, after the relocation, the line no longer crosses the Webel residence property. (Tr. 150.) Webel Farms agreed to the relocation of the transmission line away from the residence. (ATXI Ex. 1.4(R) (Rev.), p. 1.) However, Webel Farms remains unsatisfied. (Tr. 150-51.)

ATXI has engaged in lengthy negotiations with Webel Farms, and the record shows ATXI's willingness to negotiate a resolution to their concerns. ATXI increased its per-acre compensation over the course of negotiations, as a result of new information provided by Webel Farms. (Webel Cross Ex. 1.) ATXI relocated poles to accommodate Webel Farms' concerns. (*Id.*) And despite the fact that the easement acreage decreased as a result of the relocation, the increase in per-acre compensation resulted in an increase in the total offer of compensation. (*Id.*) Even now, ATXI is willing to explore additional negotiations with Webel Farms. (*Id.*) But whether ATXI is or is not ultimately willing to move the pool is beside the point. ATXI's efforts are unreasonable, and cannot be called insufficient or in bad faith merely because Webel Farms' hopes for still higher compensation for to move its swimming pool.

Next, the Keller Intervenors imply that ATXI has not been reasonably responsive because it has not accepted the Kellers' assertions that the highest and best use of their property is residential or agreed to their counteroffer. (Keller Cross Ex. 3.) The Keller Intervenors' property is currently undeveloped and devoted to agricultural use, and ATXI's appraisals determined that agricultural and recreational uses are the highest and best uses of the properties. (ATXI Ex. 1.4(I), 1.4(J), 1.4(M).) ATXI is willing to consider, and has considered, counteroffers that are based on appraisals of comparable property, and so actively encouraged the Keller Intervenors to obtain an independent appraisal of their property to support the residential value. (*Id.* at 13-14.) To date, the Keller Intervenors have not provided an appraisal

of their properties to support their position that the highest and best use of the land is residential. (*See* Keller Cross Ex. 3.) Instead, the Keller Intervenors provided a list of sales they believed to be comparable to their own properties. (*See* Keller Cross Ex. 3.) ATXI was willing to consider this information, but the majority of these sales are outside Adams County, and it is not clear from the list whether the properties are used for residential or agricultural purposes. (*See* Keller Cross Ex. 3 at 5.) And ATXI has continued to have contacts with the Kellers after the counter offer was made. (Tr. 160.)

ATXI made substantial efforts to negotiate with the Kellers, and has, on multiple occasions, requested and encouraged the Kellers to provide an appraisal to support their position. ATXI's efforts in this regard cannot be considered unreasonable, insufficient or in bad faith because the Kellers have not yet provided the requested appraisal.

Finally, Mr. Roger Liehr argued that ATXI has not made reasonable efforts to negotiate in good faith with him because ATXI allegedly had not provided Mr. Liehr with the appraisal on which ATXI's offer of compensation is based prior to the initial filing in this proceeding. (Liehr Ex. 1.0 at 3-4.) However, the record reflects that ATXI went to great lengths to engage Mr. Liehr in negotiations, in good faith, and to provide Mr. Liehr with the appraisal of the property.

Some background is relevant here. Until March 13, 2014, Mr. Liehr was under contract to purchase the property at issue from Mr. Frederick Wagner, the owner of record. (ATXI Ex. 3.0 at 6-7.) Prior to the closing date of the sale, ATXI conducted negotiations with the attorney for Mr. Wagner, Mr. William Lowry, and provided Mr. Lowry with the appraisal and all other relevant documents. (*Id.*) Although Mr. Wagner owned the property, ATXI was aware that Mr. Liehr was under contract to purchase it, and attempted to include him in the negotiations. (*Id.*) For example, ATXI representatives met with Mr. Liehr in person in January 2014 to discuss a

potential change in pole locations on the property. Additionally, ATXI representatives also contacted, or attempted to contact, Mr. and Mrs. Liehr more than 30 times—before and after the closing of the property sale from Mr. Wagner to Mr. Liehr. (*Id.* at 8.)

In addition, ATXI made reasonable efforts to provide Mr. Liehr with a copy of the appraisal of the property. In January 2014, at Mr. Liehr's request, ATXI sent an offer packet to Mr. Liehr, via FedEx, which contained a copy of the appraisal on which ATXI's offer of compensation was based, as well as an option for easement and other documentation. (*Id.* at 7; ATXI Ex. 3.2.) FedEx later notified ATXI that the recipient had refused delivery of the package. (Tr. 151-54; ATXI Redirect Ex. 1.) Several days later, ATXI attempted to send the same packet to Mr. Liehr via certified mail, with delivery confirmation and signature requested upon receipt. (ATXI Ex. 3.0, p. 7.) To date, ATXI has not received signature confirmation indicating that Mr. Liehr accepted delivery of the package. (*Id.*) Finally, counsel for ATXI provided counsel for Mr. Liehr with a copy of the appraisal on April 25, 2014. (*Id.*)

ATXI has made reasonable attempts to acquire an easement from Mr. Liehr, and to provide Mr. Liehr with all relevant information. And ATXI will continue its efforts to meet and negotiate with Mr. Liehr. But after many months of negotiation, ATXI can no longer be assured that a resolution, if any, will be timely. ATXI's efforts in negotiations cannot be considered unreasonable, insufficient or in bad faith because Mr. Liehr refused to accept mailing of the requested appraisal.

VII. USEFULNESS OF FURTHER NEGOTIATIONS

ATXI has made reasonable attempts to acquire the Unsigned Properties over many months, and will continue to seek negotiated resolutions. But further negotiations are not expected to be successful. What is ultimately critical in granting relief under Section 8-509 is not whether continued negotiations might be beneficial, but whether ATXI has engaged in

reasonable and good faith negotiations in its efforts to acquire the necessary land rights. The evidence quite clearly supports the granting of Section 8-509 relief, despite the fact attempts have not been successful with the Unsigned Property owners. Therefore, a grant of eminent domain authority is appropriate. *See, e.g., Commonwealth Edison Co.*, Docket 05-0188, Order at 7 (Feb. 23, 2006) (granting utility eminent domain authority where it had attempted to acquire the necessary property by voluntary or reasonable terms, but had not been successful in doing so); *Cent. Ill. Pub. Serv. Co.*, Docket 95-0484, Order, 1996 Ill. PUC LEXIS 368 **11-13 (July 17, 1996) (granting utility eminent domain authority where it had numerous telephonic and face to face contacts with landowners, had independent appraisals of the property interests made and made reasonable offers based on those appraisals, to no avail).

That ATXI is willing to continue to negotiate is not a basis for denying Section 8-509 authority. ATXI cannot now be assured of acquiring rights-of-way in the Unsigned Properties by negotiation in time to meet the River to Quincy and Quincy to Meredosia segment construction schedules. So eminent domain authority is needed now. Again, for over seven months (since September 2013), ATXI has contacted the landowners of the Unsigned Properties many times, and it has offered compensation for limited easement rights in their property that are reasonable and fair. (*See supra* Sections II, V.) Despite these reasonable attempts, no settlements have been reached for the Unsigned Properties. But the Illinois Rivers Project, and specifically the River to Quincy and Quincy to Meredosia segments of the Project, cannot wait forever for resolution. As explained, ATXI must adhere to the construction schedules for those segments. (*See supra* Section I.)

The River to Quincy and Quincy to Meredosia segments are scheduled to be in service in 2016, and are among the first Project segments to enter service. (Pet. at 3.) ATXI has developed

a planning and construction schedule in order to meet the in-service date for these segments, which includes time for final line design and test borings, fabrication of poles and dead-end structures to specifications, installation of foundations, and construction of the transmission line. (See ATXI Ex. 2.0, pp. 3-4.) These steps must be completed in order, but the first step can only occur after an easement is acquired. (*Id.* at 3.) For example, although final line design for the River to Quincy and Quincy to Meredosia segments is approximately 80% complete, test borings on the Unsigned Properties will not be completed until the necessary property rights can be acquired. (*Id.*) Any delay in acquiring the easements necessary to construct the Project will therefore adversely affect those construction schedules and, in turn, jeopardize the in-service dates for not only the segments at issue here, but also the Project as a whole. (*Id.*; ATXI Ex. 1.0 (Rev.), p. 16.)

Notably, if the Commission grants ATXI eminent domain authority here, ATXI next will be required to seek an order authorizing condemnation from the circuit court before it can proceed with construction on the Unsigned Properties. (*Id.*) Absent settlement, that process can take up to a year, and this time frame must be considered in relation to the in-service dates of the segments at issue. (*Id.*) The fact that reasonable negotiations have not been successful to date, and the possibility of eminent domain proceedings taking a year, mean ATXI must proceed to eminent domain now.

VIII. CONCLUSION

The evidence demonstrates that ATXI has made reasonable attempts to acquire the necessary property rights to the Unsigned Properties through good faith negotiations. Despite this, however, it is unlikely that ATXI will be able to obtain those property rights through negotiation. Because a delay in acquisition of the easements will in turn delay the construction schedule for the River to Quincy and Quincy to Meredosia (in Pike County) portions of the

Illinois Rivers Project, ATXI must obtain eminent domain authority for permanent easements, and where necessary, construction easements and access rights, across the Unsigned Properties to acquire the rights.

Dated: May 6, 2014

Respectfully submitted,

AMEREN TRANSMISSION
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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on May 6, 2014, I caused a copy of the foregoing *Initial Brief of Ameren Transmission Company of Illinois* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 14-0291.

/s/ Albert D. Sturtevant

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